STATE OF MICHIGAN

COURT OF APPEALS

ATHAR SIDDIQUI, M.D. and MEDICAL ASSOCIATES, P.C.,	UNPUBLISHED February 2, 2012
Plaintiffs-Appellants,	
v	No. 302446 Washtenaw Circuit Court
GENERAL MOTORS COMPANY,	LC No. 10-001072-CZ
Defendant-Appellee.	

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Plaintiffs Athar Siddiqui, M.D., and his medical practice Medical Associates, P.C., appeal as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(8). We affirm.

On August 30, 2010, defendant sent a "notice letter" to its employees. The letter contained a list of ten physicians and stated:

> Under the provisions of the General Motors Life and Disability Benefits Program for Hourly Employees, certification from the physicians listed below will no longer be regarded as proof of disability or accepted as an excused absence by General Motors.
>
> . . . Dr. Athar Siddiqui—Internal Medicine, Ypsilanti, MI
>
> * * *
>
> Nothing in this letter otherwise changes your ability to be provided services or treatment from the above listed physicians. Even though GM will not accept certification from these physicians for purposes of establishing an excused absence or proof of eligibility for disability benefits, GM is not suggesting that these physicians provide inadequate care.
>
> Note, this change does not impact your ability to utilize these physicians for purposes of an FMLA leave, Workers' Compensation leave or under the terms and conditions of the GM Health Care Program for Hourly Employees.

Plaintiffs demanded that defendant immediately retract the letter and issue a corrective notice removing Siddiqui from the list of excluded physicians. Defendant did not retract the letter or issue the requested corrective notice, and plaintiffs filed a civil complaint, alleging defamation by implication, business defamation, and tortious interference with a business relationship. Plaintiffs only included selected portions of defendant's notice letter in their pleadings; they did not attach the letter to their complaint. Defendant filed a motion to dismiss on the basis of MCR 2.116(C)(8), before filing an answer to plaintiffs' complaint. Defendant attached a copy of the letter to its motion, arguing that it should have been attached to plaintiffs' complaint and therefore should be considered a part of the pleadings for the purpose of the motion.

The trial court heard arguments regarding defendant's motion to dismiss, and it granted the motion with regard to the counts of defamation by implication and business defamation. The trial court questioned defendant about the policy decisions leading to its issuance of the notice letter, and it ordered the parties to file supplemental briefs concerning the count of tortious interference with a business relationship. It also ordered defendant to provide a copy of its Supplemental Agreement Covering Life and Disability Benefits Program. After considering the parties' briefs and the Supplemental Agreement, the trial court dismissed plaintiffs' claim of tortious interference with a business relationship.

This Court reviews de novo the trial court's determination concerning a motion for summary disposition. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). Summary disposition will be granted under MCR 2.116(C)(8) when a party "has failed to state a claim on which relief can be granted." MCR 2.116(C)(8). Summary disposition is proper under MCR 2.116(C)(8) "only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). All factual allegations supporting the claim and any reasonable inferences that can be drawn from them are accepted as true, *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 670; 760 NW2d 565 (2008), and are construed in the light most favorable to the nonmoving party, *Cummins v Robinson Twp*, 283 Mich App 677, 689; 770 NW2d 421 (2009). Only factual allegations are accepted as true; legal conclusions are not. *Davis v City of Detroit*, 269 Mich App 376, 379 n 1; 711 NW2d 462 (2006).

I. DOCUMENTARY EVIDENCE OUTSIDE OF THE PLEADINGS

Plaintiffs first argue that the trial court improperly considered documentary evidence outside of the pleadings when it considered the notice letter and the Supplemental Agreement. A motion under MCR 2.116(C)(8) may not be supported by documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994); MCR 2.116(G)(5). However, if a pleading is based on a written instrument, a copy of the instrument must, in most instances, be attached to the pleadings and will be considered a part of the pleadings. MCR 2.116(F)(1) and (2).

A. THE NOTICE LETTER

Plaintiffs argue that the trial court improperly considered documentary evidence when it considered the letter and that the letter should not be considered a written instrument under MCR

2.116(F)(1) because that rule is limited to contracts, "negotiable instruments," and "negotiable documents." We disagree.

This Court has not limited the application and analysis of MCR 2.116(F)(1) to written contracts and negotiable instruments, as plaintiffs suggest. See, e.g., *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 301 n 1; 778 NW2d 679 (2010), and *English Gardens Condo, LLC v Howell Twp*, 273 Mich App 69, 80-81; 729 NW2d 242 (2006). The court rule in question does not define "written instrument." Black's Law Dictionary (9th ed) defines "instrument" as "1. A written legal document that defines rights, duties, entitlements, or liabilities, such as a contract, will, promissory note, or share certificate. . . . An instrument seems to embrace contracts, deeds, statutes, wills, Orders in Council, orders, warrants, schemes, letters patent, rules, regulations, bye-laws, whether in writing or in print, or partly in both; in fact, *any written or printed document that may have to be interpreted by the Courts*" (emphasis added; internal citation and quotation marks omitted).

In light of the above authorities, plaintiffs are incorrect that MCR 2.113(F) does not encompass a document such as the notice letter. We conclude that the trial court did not err when it considered the notice letter in deciding defendant's motion under MCR 2.116(C)(8). Plaintiffs' complaint references the notice letter on nearly every page. Plaintiffs' complaint quotes selectively from the notice letter, even though it does not include the text in its entirety. Plaintiffs and defendant both rely heavily on the language of the letter in their arguments. It would be illogical to prohibit the trial court from considering a written defamatory statement in its proper context, particularly when plaintiff and defendant rely so heavily on the language of the notice letter and plaintiffs' complaint frequently references it.[1] No error requiring reversal occurred.

B. FACTUAL TESTIMONY AND THE SUPPLEMENTAL AGREEMENT

Plaintiffs further argue that the trial court improperly considered unsupported factual testimony and the Supplemental Agreement because it was documentary evidence that could not support the trial court's decision under MCR 2.116(C)(8).

Contrary to plaintiffs' claim that "with respect to Counts I and II" the trial court considered "unsupported factual testimony regarding GM's multi-year examination of doctors certifying disabilities," any extra factual discussion by the trial court was limited to the third count of plaintiffs' complaint. The trial court posed questions to defendant's counsel about how doctors were selected for inclusion in the letter, but the trial court asked these questions *after* it had moved on to discussing plaintiffs' third count. To the extent that defendant's counsel answered the trial court's questions, counsel's answers were consistent with the Supplemental Agreement that the trial court *asked* defendant to include with its supplemental brief. There is no

[1] The Michigan Supreme Court has instructed that "allegedly defamatory statements must be analyzed in their proper context." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 129; 793 NW2d 533 (2010).

indication that the trial court relied on defense counsel's statements or the Supplemental Agreement in granting summary disposition concerning Counts I and II.

Plaintiffs correctly argue, however, that the trial court erred by asking that the Supplemental Agreement be included in defendant's brief concerning the third court. Unlike the notice letter, the parties did not rely on the Supplemental Agreement in their briefs and arguments to the trial court until after the trial court began asking about it. The trial court ordered that the parties submit supplemental briefs on Count III, and it ordered defendant to include the Supplemental Agreement with its brief. The trial court subsequently relied on the Supplemental Agreement when it granted defendant's motion on the third count. A motion under MCR 2.116(C)(8) may not be supported by documentary evidence. MCR 2.116(G)(5). Unlike the notice letter discussed above, plaintiffs did not rely on the Supplemental Agreement as the basis for any claim, and the Supplemental Agreement was not referenced in plaintiffs' complaint. Therefore, the trial court erred when it asked for the Supplemental Agreement, because it was documentary evidence that was not included in the pleadings and was not required to be attached to the pleadings under MCR 2.113(F)(1).

However, plaintiffs incorrectly state that the trial court's error requires reversal. We can resolve plaintiffs' tortious interference claim on the pleadings alone, as explained in the analysis of the claim below. This Court can affirm the trial court's decision when it reaches the correct result for the wrong reason. *Lane v Kindercare Learning Ctrs, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).[2]

II. DEFAMATION BY IMPLICATION

Plaintiffs argue that they have pleaded sufficient facts to fulfill the elements of defamation by implication. We disagree.

The elements for a claim of defamation are "(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod)." *Kevorkian v American Med Ass'n*, 237 Mich App 1, 8-9; 602 NW2d 233 (1999). Only the first and second elements are at issue in this case.

[2] Further, when the parties and trial court have relied on documentary evidence outside of the pleadings, this Court will consider the motion as though it had been granted under MCR 2.116(C)(10) and will consider the documentary evidence as well as the pleadings. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). If this Court could not resolve plaintiffs' claim of tortious interference on the pleadings alone, we could review the dismissal of plaintiffs' tortious interference claim as though it were granted under MCR 2.116(C)(10).

The first element of defamation is a false and defamatory statement. *Id*. at 8. Plaintiffs and defendant incorrectly treat this as a single analysis. Whether a statement is capable of a defamatory meaning and whether it is materially false are separate inquiries. *Locricchio v Evening News Ass'n*, 438 Mich 84, 130; 476 NW2d 112 (1991). Summary disposition is appropriate when a statement is not capable of a defamatory meaning as a matter of law. *Kevorkian*, 237 Mich App at 9.

This Court has extended defamation by implication to private figure plaintiffs and non-media defendants. *Hawkins v Mercy Health Services, Inc*, 230 Mich App 315, 326; 583 NW2d 725 (1998). In *Hawkins*, the defendant hospital issued a press release that stated, in part:

> As of today, interviews from hospital personnel and physicians regarding this incident [the fatal accidental drug overdose of a patient] and a review of the medical records have been referred to the hospital's Medical Staff Credentials Committee in accordance with Medical Staff by-laws.
>
> The Credentials Committee will perform an evaluation of this patient's medical care.
>
> Our administration has also instituted disciplinary action. In accordance to [sic] our employee disciplinary policies and procedures, one employee is no longer with the hospital. Another employee has received an appropriate disciplinary action. [*Id*. at 321]

The plaintiff was the employee who had been discharged. *Id*. at 319. The plaintiff was terminated because she had lied to her superiors when she denied that a conversation had taken place; in this conversation, she had criticized, in the hearing of his family, the care the overdose patient had received. *Id*. at 318-319. The Court concluded that the press release was materially false because "the clear implication . . . is that the hospital discharged [the plaintiff] for her involvement in the administration of the overdose." *Id*. at 335.

Generally, a defamatory communication is a communication that so harms the reputation of persons that their estimation in the community is lowered or that others are deterred from associating with them. *Locricchio*, 438 Mich at 115. This Court applies an objective, reasonable- person standard to determine whether a statement is defamatory. *Ireland v Edwards*, 230 Mich App 607, 618-619; 584 NW2d 632 (1998). The Court in *Hawkins* determined that "the clear implication" of the hospital's statement in that case was materially false. *Hawkins*, 230 Mich App at 335. Therefore, a statement will be a defamatory statement if the statement has a clearly defamatory implication when based on an objective, reasonable-person standard.

Plaintiffs' complaint contained the following statements about the letter:

> 8. On August 30, 2010, GM published defamatory and libelous statements concerning Dr. Siddiqui in a form letter . . . stating that "certification from Dr. Siddiqui – Internal Medicine – Ypsilanti, MI – will no longer be regarded as proof of disability or accepted as an excused absence by GM."

* * *

> 10. The Notice imputes fraud, deceit, dishonesty or reprehensible conduct by Dr. Siddiqui in his treatment of patients and/or certification of their disabilities or excused absences.
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> * * *
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> 13. The Notice threatens the addressees with the statement that "disability claims requested on or after October 1, 2010 will not be payable" if certification is provided by Dr. Siddiqui, which implies that the addressees should discontinue treatment or any further dealings with Dr. Siddiqui and/or Medical Associates.

We do not find that the allegedly defamatory statements in *Hawkins* and the statements in this case are analogous. When the *Hawkins* statement is read in its entirety, there is a clear implication that the plaintiff in that case was fired because of her involvement in a drug overdose. In this case, the letter simply states that defendant will no longer accept proof of disability or excused absences from Siddiqui. We find that the alleged defamatory implications of the statement—that plaintiff Siddiqui is guilty of fraud, deceit, or dishonesty—are much more tenuous than the implication in *Hawkins*.

Furthermore, "allegedly defamatory statements must be analyzed in their proper context." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 129; 793 NW2d 533 (2010). The letter contained other statements, including "[n]othing in this letter otherwise changes your ability to be provided services or treatment from the above listed physicians," and "this change does not impact your ability to utilize these physicians for purposes of an FMLA leave, Workers' Compensation leave or under the terms and conditions of the GM Health Care Program for Hourly Employees." When defendant has approved of Siddiqui's services and treatments being used for FMLA leave, for Workers' Compensation leave, and in conjunction with defendant's Health Care Program for Hourly Employees, a reasonable person reading the statements in their proper context would not conclude that defendant intended patients to discontinue their services and treatments with Siddiqui because he is guilty of fraud, deceit, and dishonesty. Moreover, the letter states that "[e]ven though GM will not accept certification from these physicians for the purposes of establishing an excused absence or proof of eligibility for disability benefits, GM is not suggesting that these physicians provide inadequate care." We conclude that the letter is not capable of a defamatory meaning when read in its proper context and viewed under a reasonable-person standard.

Because the statements are not defamatory statements as a matter of law, this Court need not consider whether the statements or associated implications are materially false or whether plaintiffs have pleaded an unprivileged communication to a third party.

III. BUSINESS DEFAMATION

Plaintiffs argue that the trial court improperly granted summary disposition concerning their claim of business defamation, as applied to plaintiff Medical Associates. We disagree.

A for-profit business may assert a defamation claim if a defamatory statement "tends to prejudice it in the conduct of its business or to deter others from dealing with it." *Heritage Optical Ctr, Inc v Levine*, 137 Mich App 793, 797; 359 NW2d 210 (1984) (internal citation and quotation marks omitted). A plaintiff must still, of course, meet the other requirements of defamation. One of the basic requirements of a defamatory statement is that it must have a specific application to the plaintiff. *McGraw v Detroit Free Press Co*, 85 Mich 203, 209-210; 48 NW 500 (1891); see also *Curtis v Evening News Ass'n*, 135 Mich App 101, 103; 352 NW2d 355 (1984). Summary disposition is appropriate when a statement is not capable of a defamatory meaning as a matter of law. *Kevorkian*, 237 Mich App at 9.

The notice letter does not name plaintiff Medical Associates. Because the allegedly defamatory statements contained in the letter do not have a specific application to plaintiff Medical Associates, the trial court did not err in dismissing plaintiffs' business defamation claim under MCR 2.116(C)(8).[3]

IV. TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

Plaintiffs argue that the trial court erred in dismissing the claim of tortious interference with a business relationship because the trial court considered matters outside the pleadings in dismissing this count. For the reasons stated above, we agree that the trial court improperly considered certain evidence when it dismissed this claim. However, we conclude that plaintiffs' claim of tortious interference was properly dismissed even when only the pleadings are considered.

The elements of tortious interference with a business relationship are: "(1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) an intentional interference causing a breach or termination of the relationship or expectancy; and (4) resulting damage to the party whose relationship or expectancy has been disrupted." *Joba Constr Co v Burns & Roe, Inc*, 121 Mich App 615, 634; 329 NW2d 760 (1983). Defendant only disputes the third element, and argues that it did not intentionally interfere with plaintiffs' business.

To meet the third element of tortious interference with a business relationship, a plaintiff must establish that the defendant (1) acted intentionally, and (2) acted either improperly or without justification. *Dalley*, 287 Mich App at 323. In order to show that the defendant acted improperly or without justification, a plaintiff must allege either (1) an act that is per se wrongful, or (2) an unjustified but lawful act done with malice for the purposes of invading the plaintiff's relationship. *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). A "per se" wrongful act is one "that is inherently wrongful or an act that could never be justified under any circumstances." *Prysak*, 193 Mich App at 12-13. If the plaintiff does not allege a per se wrongful act, the plaintiff must "demonstrate specific, affirmative acts taken by the defendant

[3] Moreover, the business-defamation claim would also fail for the same reasons set forth in section II of this opinion.

that corroborate the improper motive of the interference." *Cedroni Assocs v Tomblinson, Harburn Assocs Architects & Planners, Inc*, 290 Mich App 577, 600; 802 NW2d 682 (2010).

Plaintiffs' complaint states, in pertinent part:

> 8. . . . GM published . . . a form letter to certain GM hourly employees dated August 30, 2010 regarding its policy for new or recurrent disability claims ("Notice"), stating that "certification from Dr. Siddiqui—Internal Medicine—Ypsilanti, MI—will no longer be regarded as proof of disability or accepted as an excused absence by GM."
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> * * *
>
> 13. The Notice threatens the addressees with the statement that "disability claims requested on or after October 1, 2010 will not be payable" if certification is provided by Dr. Siddiqui, which implies that the addressees should discontinue treatment and/or any further dealings with Dr. Siddiqui and/or Medical Associates.
>
> 14. The Notice has deterred and will continue to deter patients of Dr. Siddiqui and/or Medical Associates, including, but not limited to, GM hourly employees, from seeking medical treatment from Dr. Siddiqui and/or Medical Associates.
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> * * *
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> 36. GM knew of the business relationship and/or expectancy between Plaintiffs and its patients that are GM hourly employees and their family members.
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> 37. GM intentionally and improperly interfered with such business relationship and/or expectancy.
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> 38. GM's intentional, improper and illegal conduct caused the termination of Plaintiffs' business relationship and/or expectancy with its patients that are GM hourly employees and their family members.

This Court concludes that defendant's letter to its employees informing them of a change in its policy is not "per se" wrongful, because the letter could be justified under many circumstances and is not in itself illegal, unethical, or fraudulent. In addition, plaintiffs have not alleged affirmative acts *that corroborate an improper motive of interference*. Indeed, even when plaintiffs' defamation claims are incorporated by reference into plaintiffs' claim of tortious interference, nothing corroborates any improper motive on defendant's part with regard to tortious interference. Because plaintiffs' complaint does not contain any allegations that would corroborate an improper motive of interference, plaintiffs have not sufficiently pleaded the third element of tortious interference. There is no basis for reversing the trial court's ruling.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter